

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:10-CR-219-BO-1
NO. 5:12-CV-82-BO

UNITED STATES OF AMERICA)
)
 v.) O R D E R
)
 CHRISTOPHER DON GRAY)

This matter is before the Court on Defendant's "Motion to Vacate under 28 U.S.C. § 2255" [DE 114]. The United States responded on March 22, 2012 [DE 119]. Although Mr. Gray captions his motion as a motion pursuant to section 2255, the relief he seeks dictates that his motion is properly a motion pursuant to 18 U.S.C. § 3582(c) and shall be so construed. *Haines v. Kerner*, 404 U.S. 519, 520, (1972) (pro se litigants are entitled to liberal construction of their pleadings); *Armstrong v. Capshaw, Goss & Bowers, LLP*, 404 F.3d 933, 936 (5th Cir. 2005) (district courts are to determine the true nature of a pleading by its substance, not its label); *see also Edwards v. City of Houston*, 78 F.3d 983, 995 (5th Cir.1996) (en banc) ("[W]e have oft stated that 'the relief sought, that to be granted, or within the power of the Court to grant, should be determined by substance, not a label' ") (quotation omitted). In its response of March 22, 2012 [DE 119], the United States agreed with this characterization of Mr. Gray's motion.

In keeping with the true nature of Mr. Gray's motion, and to avoid the consequences attendant to filing a section 2255 motion as listed in 28 U.S.C. § 2255(h), this motion shall be considered as a motion pursuant to 18 U.S.C. § 3582(c) in Mr. Gray's criminal case, No. 5:10-CR-219-BO. The civil case, No. 5:12-CV-82-BO, shall be closed.

Pursuant to Standing Order 11-SO-01, the Office of the Federal Public Defender for the

Eastern District of North Carolina is hereby appointed to represent Mr. Gray. The United States seeks an order holding this motion in abeyance based on the Standing Order [DE 119 at 1]. The Court will not rule on this motion until the Federal Public Defender responds, within 20 days of the date of entry of this order. If the Federal Public Defender agrees that Mr. Gray's motion should be held in abeyance, it may file a proposed order to that effect with its response.

SO ORDERED, this the 28 day of March, 2012.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE